

February 2011 - Vermont Bar Examination Essay Questions

QUESTION 1 - February 2011

PLEASE NOTE: QUESTION 1 was a "Multistate Performance Test" (MPT) will not be answered here.

QUESTION 2 – February 2011

PLEASE NOTE: QUESTION 2 was a "Multistate Performance Test" (MPT) will not be answered here.

QUESTION 3 – February 2011

This question is designed to take 60 minutes to answer

In 1990, Bill subdivided his property in Rutlington, Vermont into two parcels: the “front property” and the “rear property.” In the same year, he sold the front property to Allison, and continued to live in a home on the rear property. Bill’s most convenient access to the rear property was over a driveway that crosses Allison’s property to Bill’s. The only other access is over a steep logging road that Bill owns. Bill rarely used the logging road; he routinely used the driveway to access his home while he lived there. The deed from Bill to Allison was signed by Bill in the presence of two witnesses who signed the deed, one of whom was a local notary. There was a blank line for a notary to sign a statement that Bill personally appeared and acknowledged the deed, but there was no signature on the blank line. The deed made no mention of the driveway. Allison has lived full-time on the front property since 1990.

Bill lived full-time in the rear property until his death in 1998. In 1998, Bill’s estate deeded the rear property to his niece, Carla. Carla vacationed there for a few weeks each summer through 2010. She accessed the rear property using the driveway, but never used the logging road. Carla plans to move to the rear property full-time in 2012 in order to operate a small day care center in the house.

In 2003, Allison refinanced the front property and provided a note and first mortgage to the Dugway Bank to secure the loan. In fall 2010, Allison lost her job and stopped making payments on the loan. Dugway Bank is a recipient of money from the federal Troubled Assets Relief Program, created as part of the Emergency Economic Stabilization Act of 2008 (P.L. 110-343).

- 1) Describe in detail the steps that Dugway must take to initiate enforcement of its mortgage.
- 2) Describe the steps that Allison must take to preserve any defenses to enforcement of the mortgage and other options she may have related to Dugway’s claims.

- 3) Analyze the impact of the deed from Bill to Allison on both Allison's and Dugway's interests in the front property.
- 4) Analyze Carla's right to access the rear property using the driveway that crosses Allison's property.

QUESTION 4 -- February 2011

This question is designed to take 60 minutes to answer

Phyllis comes to see you for advice regarding the dissolution of her marriage to Diane. Phyllis and Diane (both age 50) met in high school in 1975 and have been living together since 1981. They entered into a civil union in Vermont on July 2, 2000 and were married in Bennington County on September 2, 2009. Phyllis gave birth to a daughter, Christine, on February 1, 2010. Christine was conceived by artificial insemination from an anonymous sperm donor. Phyllis has been primarily responsible for taking care of Christine as she does not work outside of the home. She has been breastfeeding Christine and plans to continue to do so for the foreseeable future. Although she is devoted to Christine, Diane has not spent much time looking after her because of her busy medical practice. Phyllis and Diane separated on July 5, 2010. Phyllis remains in Bennington County with Christine. Diane has moved to Chittenden County. Phyllis wants to file for divorce but she and Diane cannot agree on parental rights or resolution of financial issues.

When Phyllis and Diane married, Phyllis owned a home worth \$500,000 in Bennington County and a Cape Cod cottage worth \$1 million. In addition, Phyllis has \$2 million in an investment account and \$1.5 million in a retirement account. Phyllis inherited all of her assets and property at age 21 in 1981. Phyllis graduated from high school but did not attend college. She has never worked outside of the home, but has done extensive volunteer work. Phyllis supports herself from investment income of \$100,000 per year.

Diane is a practicing family physician. Phyllis financed all of Diane's education and supported her while she was working toward undergraduate and medical degrees. Diane has worked full time in her own medical practice in Bennington County since 1990. Until she and Phyllis separated, Diane was earning approximately \$75,000 per year. She was able to fund her Individual Retirement Account (IRA) over the past ten years as Phyllis has covered most of the couple's living expenses. They have enjoyed a very comfortable standard of living over the years.

Since the separation and her move to Chittenden County, Diane has been looking for full time work but has only been able to pick up a few hours per week at the hospital emergency room. Since July, she has earned about \$2,000 per month and, due to the economy, she tells Phyllis she's not optimistic she can secure better employment any time soon. She has also told Phyllis that it would be a significant hardship if she had to return to Bennington County to attend Court as she must be available to work at the

emergency room when they call her on very short notice. She tells Phyllis that she may oppose the divorce if it means she must attend a court hearing in person.

Today, the only assets in Diane's name are her IRA and her vehicle. In 2000, Diane's only asset was a vehicle. Her IRA is currently worth 100,000. She owns no real estate.

1. Which Court will have jurisdiction to grant a divorce? Analyze and discuss.
2. Which factors are likely to be most important in awarding parental rights and responsibilities for Christine? Analyze and discuss.
3. Will either party be likely to have to pay child support? Analyze and discuss.
4. Which factors are likely to be most important in dividing the property and in awarding spousal support, if any? Analyze and discuss.
5. Will either party be able to receive Social Security retirement benefits from the other after the divorce is final? Analyze and discuss.
6. Can Diane prevent the divorce from going forward? Analyze and discuss.
7. Is there any way for the divorce to be finalized without either party having to appear in Court? Analyze and discuss.

QUESTION 5 -- February 2011

This question is designed to take 60 minutes to answer

In June 2007, when the real estate market was still strong, Dan wanted to buy a two-family home in Rutland, Vermont. It cost \$300,000; the down payment was \$60,000. Dan had saved up \$15,000 from his job as an engineer, and his Aunt Ada lent Dan the additional \$45,000. Dan planned to live in one unit of the house and rent out the other unit using the rental income to make his mortgage payments. Dan financed the remaining \$240,000 with ABC Bank.

Aunt Ada had Dan execute a promissory note for the \$45,000, but she did not record it in the land records, nor did she receive a mortgage from Dan securing the note. ABC Bank properly recorded its mortgage deed in the land records.

Dan moved into one unit of the house and rented out the other unit. After paying the monthly mortgage from the rent, Dan had about \$200 left over which he used towards his living expenses. In April 2009, Dan was laid off. He decided to go back to school to get a graduate degree. Beginning in September 2009, Dan took out student loans to pay for his tuition expenses.

In March 2010, Dan's tenants moved out, turning down the thermostat before they left. Dan was away the weekend they moved. When he returned, Dan found the pipes in the rental unit had frozen and burst, causing substantial water damage. Unfortunately, Dan had let his home-owner's insurance lapse, so he would have to pay for the repairs himself. Since Dan was in graduate school, he did not have the money to pay for the repairs. In turn, he was unable to rent out the unit. Without rental income, Dan fell behind

on his mortgage payments. After Dan missed his June 2010 mortgage payment, ABC Bank called in the loan and threatened to commence a foreclosure action. The house is still worth \$300,000.

Dan decides to withdraw from school and find a job so he can earn money to repair and rent the rental unit. In the meantime, he wants to address his financial mess, and is contemplating filing for bankruptcy. In addition to his mortgage arrears and school loans, Dan has \$15,000 in credit card debt and an outstanding balance of \$5,000 on a 2004 loan, secured by his car worth \$3,000.

1. Explain what preliminary steps Dan will have to take if he files for bankruptcy relief.
2. Discuss what will happen to Dan's assets and debts if he files for bankruptcy relief under Chapter 7.
3. Discuss the eligibility factors for Dan to file for relief under Chapter 13.
4. Assuming Dan can file for bankruptcy relief under Chapter 13, discuss what will likely happen to his assets and debts.

QUESTION 6 - February 2011

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On May 5, at 2 p.m. in City Park, Victim was hit from behind and temporarily knocked unconscious. Upon regaining consciousness moments later, Victim discovered that his bag containing valuables had been stolen.

While investigating the crime later that day, Police Officer interviewed Witness. Witness told Police Officer that she had seen the robbery of Victim and had recognized Defendant, a resident of the neighborhood, as the perpetrator. Witness also told Police Officer that Defendant had a reputation in the neighborhood for violence, that everyone was afraid of him, and that she shouldn't be talking to the police at all. Nevertheless, Witness agreed to accompany Police Officer to police headquarters, where she looked at photographs of suspects and signed a written statement. The statement read, "I was walking in City Park on May 5, at 2 p.m., when I saw Defendant. I saw Defendant attack Victim and then run away with Victim's bag. I know Defendant from the neighborhood and recognized Defendant as suspect number 1 on the 12-person photograph display shown to me today by Police Officer."

Defendant was subsequently arrested and charged with robbery and assault.

At Defendant's trial, Prosecutor called Witness to the stand. In response to questions from Prosecutor, Witness testified that she had no memory of the incident. She stated that she did not remember seeing anyone in City Park at the time of the alleged robbery. When Prosecutor asked Witness whether her sudden memory loss was because she was afraid of Defendant, Witness said that she had never seen Defendant before in her life and was not afraid of him because she did not know him. When Witness was asked whether

she had told Police Officer that Defendant had robbed Victim, Witness denied ever making that statement.

Immediately after this testimony, Prosecutor offered Witness's signed statement into evidence to impeach Witness's credibility and to prove that Defendant was in City Park and attacked Victim. An authenticated copy of Witness's statement was provided to Defense Counsel. Defense Counsel raised no constitutional challenges to Witness's identification of Defendant at police headquarters. However, Defense Counsel objected to Prosecutor questioning Witness about the statement and to admission of the copy of the statement. The judge sustained both objections.

After the prosecution had rested, Defense Counsel called Buddy to the stand. Buddy testified that he had never met Defendant. He also testified that some of his friends had recently met Defendant a few times, and that they think that Defendant is an honest and gentle person who would never hurt anyone. Prosecutor objected to this testimony. The judge sustained the objection and excluded Buddy's testimony.

The rules of evidence in this jurisdiction are identical to the Federal Rules of Evidence.

1. Should the judge have permitted Prosecutor to question Witness about Witness's written statement and admitted the copy of the statement to impeach Witness's credibility? Explain.
2. Should the judge have admitted Witness's written statement to prove that Defendant was in City Park and attacked Victim? Explain.
3. Should the judge have admitted Buddy's testimony to prove Defendant's character for honesty and gentleness? Explain.

QUESTION 7 - February 2011

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After recent terrorist threats, Metro Opera (Metro) decided to place metal detectors in its lobby. Metro also marked off an area just beyond the metal detectors in which to search patrons who failed the metal-detector test. Metro posted a sign near the entrance that read: "Warning! No metal objects allowed inside. All entrants are screened and may be searched."

Claimant and Friend saw the warning sign as they entered Metro. After entering, they observed several patrons being frisked. Claimant said to Friend, "I'm certainly not going to allow anyone to touch me!"

Claimant then walked through the metal detector, which buzzed. Without asking Claimant's permission, Inspector, a Metro employee, approached Claimant from behind and began to frisk Claimant. Claimant leaped away from Inspector and snarled, "Leave

me alone!” Guard, another Metro employee, then used a stun device, which administers a painful electric shock, to subdue Claimant.

Unfortunately, the stun device, manufactured by Alertco, malfunctioned and produced a shock considerably more severe than that described in Alertco’s product specifications. The shock caused minor physical injuries and triggered a severe depressive reaction that necessitated Claimant’s hospitalization. Claimant had a history of depression but was in good mental health at the time of the shock. Claimant was the first person who had ever experienced a depressive reaction to the Alertco device.

The Alertco device malfunctioned because it was incorrectly assembled at the factory and therefore did not meet Alertco’s specifications. Alertco’s assembly-inspection system exceeds industry standards, and it is widely recognized as the best in the industry. Nonetheless, it did not detect the assembly mistake in the device that injured Claimant.

Claimant has filed two tort actions seeking damages for her physical and psychological injuries: (1) Claimant sued Metro, claiming that both the frisk and the use of the stun device were actionable batteries, and (2) Claimant brought a strict products liability action against Alertco.

Metro has conceded that the actions of Inspector and Guard were within the scope of their employment. Metro had instructed its employees to ask permission before frisking patrons, but on the day Claimant was frisked, a supervisor told employees to frisk without asking permission in order to speed up the entrance process.

1. Can Claimant establish a prima facie case of battery against Metro for (a) the use of the stun device and (b) the frisk? Explain.
2. Does Metro have a viable defense to either battery claim? Explain.
3. Can Claimant establish the elements of a strict products liability claim against Alertco based on the malfunction of the device? Explain.
4. Assuming that Claimant establishes either Metro’s or Alertco’s liability, can Claimant recover for her depressive reaction to the stun device? Explain.